No. 79.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

UNITED STATES OF AMERICA,

Petitioner,

v.

THE F. & M. SCHAEFER BREWING CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE F. & M. SCHAEFER BREWING CO.

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Question Presented.

Whether the time for appeal to the United States Court of Appeals for the Second Circuit runs from the date of filing and docketing of a decision of the United States District Court for the Eastern District of New York granting a motion for summary judgment for money only, or whether the time for appeal begins to run only after the signing and docketing of a formal order for recovery of the sum in suit.

Rules Involved.

Federal Rules of Civil Procedure:

Rule 54. JUDGMENTS; COSTS.

(a) *Definition; Form.* "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

* * * * * *

Rule 58 [As amended December 27, 1946]. ENTRY OF JUDGMENT.

Unless the court otherwise directs and subject to the provisions of Rule 54 (b), judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry. The entry of the judgment shall not be delayed for the taxing of costs.

Rule 73 [As amended December 27, 1946, and December 29, 1948]. APPEAL TO A COURT OF APPEALS.

(a) *When and How Taken.* When an appeal is permitted by law from a district court to a court of

appeals the time within which an appeal may be taken shall be 30 days from the entry of the judgment appealed from unless a shorter time is provided by law, except that in any action in which the United States or an officer or agency thereof is a party the time as to all parties shall be 60 days from such entry, and except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment the district court in any action may extend the time for appeal not exceeding 30 days from the expiration of the original time herein prescribed. * * *

A party may appeal from a judgment by filing with the district court a notice of appeal. * * *

* * * * * *

Rule 79 [As amended December 27, 1946, and December 29, 1948]. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN.

(a) *Civil Docket.* The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk

shall enter the word "jury" on the folio assigned to that action.

(b) *Civil Judgments and Orders.* The clerk shall keep, in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

* * * * * * *

Statement.

The F. & M. Schaefer Brewing Co., respondent here and plaintiff below, brought action in the United States District Court for the Eastern District of New York to recover $7,189.57 stamp taxes paid by it, together with interest and costs. Defendant's answer admitted the payment. Thereafter plaintiff moved for summary judgment. Following a hearing of the motion, Judge Rayfiel, on April 14, 1955, filed a two-page memorandum decision which recited that plaintiff had moved for summary judgment, referred to the specific amount in suit and ended with the words:

"* * * the plaintiff's motion is granted."

On the same day, the clerk of the district court made the following docket entry:

"April 14 Rayfiel, *J.* Decision rendered on motion for summary judgment. Motion granted. See opinion on file."

Subsequently, plaintiff submitted a formalized judgment, which the Judge signed on May 24, 1955. Thereupon the clerk made an entry in the docket as follows: "May 24

Raytiel, *J.* Judgment filed and docketed against defendant in the sum of $7,189.57 with interest of $542.80 together with costs $37 amounting in all to $7,769.37. Bill of Costs attached to judgment."

The defendant filed its notice of appeal on July 21, 1955, that is, 96 days from the original grant of summary judgment and 58 days from the filing of the formalized judgment. Plaintiff moved to dismiss the appeal on the ground that the notice was not filed within the 60-day period from the date of entry of judgment permitted under Rule 73(a), F. R. C. P. By unanimous decision of the United States Court of Appeals for the Second Circuit, sitting *en banc*, the plaintiff's motion was granted and the appeal dismissed. 236 F. 2d 889.[1] This Court granted certiorari.

Summary of Argument.

The opinion of the district court, which entitled the plaintiff to recover only money, represented a complete adjudication of the case. This being so, the opinion itself contained all the elements of a judgment under Rule 58 and constituted the judgment when filed. The subsequent formal order signed by the judge could not destroy the effect of the judgment which already had been rendered or delay the time for appeal. Alternatively, even if Rule 58, standing alone, should not be held to require that the opinion be considered the judgment, nevertheless, in light of applicable local rules of court, the opinion must be deemed to have constituted the judgment.

There having been a judgment at the time the decision was rendered, there was also a proper entry of judgment

[1] It may be noted that the opinion of the Second Circuit was written by Chief Judge Clark who has long been a leader in the development of the Federal Rules, first as Reporter and now as Chairman of the Advisory Committee on Rules for Civil Procedure.

when the clerk of the district court noted the decision in the docket; for once judgment has been rendered all that is required for a proper entry of judgment is that the docket entry make clear what has been done. Inasmuch as the appeal was taken more than 60 days after entry of judgment, the appeal was untimely.

ARGUMENT.

Under Rule 73(a), F. R. C. P., the time within which an appeal may be taken in cases in which the United States is a party is 60 days from the entry of the judgment appealed from. Thus, in order to determine whether an appeal is timely, it is necessary to determine when there is a judgment and the date when the judgment was entered. It is submitted that the memorandum decision filed on April 14, 1955 constituted the judgment and that judgment was duly entered when the clerk made his docket entry on the same day. As the government's appeal was taken more than 60 days thereafter, the appeal was untimely and was properly dismissed.

I.

The memorandum decision of the District Court for the Eastern District of New York, granting summary judgment for a sum of money only, constituted the judgment.

A. Under Rule 58, the final decision of a district court that a party is entitled to recover only money constitutes the judgment, and a subsequent formal order of the court does not operate to postpone judgment.

The Rules do not contain any precise definition of a "judgment", the only definition being in Rule 54(a), F. R. C. P., which states that a judgment "includes a decree

and any order from which an appeal lies." There is no indication in Rule 54(a) whether or not a judgment need be embodied in a separate formal document. However, when we turn to Rule 58, it is manifestly clear that a formal judgment is neither required nor appropriate where there has been complete adjudication in an action for money only. Rule 58 provides, in part:

> "* * * When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. * * *"

Not only does Rule 58 require the clerk to enter judgment *forthwith* upon a direction for the recovery of money only, but this requirement stands in sharp contrast to the provision requiring a formal order where other types of relief are involved.

The purpose of Rule 58 to do away with formal judgments in money cases is also shown by the history of the amendments to the Rule. In 1946, Rule 58 was amended as follows (the language in brackets below having been deleted and the language in italics having been added):

> "* * * When the court directs [the entry of a judgment] that a party recover only money or costs or that [there be no recovery] *all relief be denied*, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. * * *"

This amendment is explained in the Notes prepared by the Advisory Committee on Rules for Civil Procedure,

which drafted the amendment, as follows (10 Fed. Rules Serv. cxviii):

> "The substitution of the more inclusive phrase 'all relief be denied' for the words 'there be no recovery', makes it clear that the clerk shall enter the judgment forthwith in the situations specified without awaiting the filing of a formal judgment approved by the court."

The Notes of the Advisory Committee thus make clear the intent that there should be no formal judgment in cases where all relief is denied. Inasmuch as exactly the same provision of Rule 58 applies to cases where the court grants a recovery only of money, it is equally clear that no formal judgment is to be filed in such cases.

The government's historical analysis (Brief pp. 14-15), which seeks to trace the meaning of the word "judgment" to a source in the old Federal Equity Rules and from which the inference evidently is drawn that, as in equity, a judgment must be represented by a formal order or decree, is unpersuasive. Rule 58, by its reference to "judgment for other relief", expressly provides for a formal judgment or decree where relief of an equitable nature is involved, but the Rule makes no such provision where a recovery of money, the very antithesis of equitable relief, is involved.

In light of the clear command of Rule 58, further illuminated by its background, the opinion in the instant case, which expressly set forth the amount for which summary judgment was sought and ended in final adjudication with the words "* * * the plaintiff's motion is granted", contained all that was required for a direction for judgment. There being such a direction, all that remained was for the clerk to enter the judgment in the docket. The subse-

quent action of the district judge in signing a formalized order could not deprive the earlier judgment of the validity which it already had.

The decision of this Court in *United States v. Hark*, 320 U. S. 531 (1944), upon which the government so strongly relies, does not stand for a contrary view. The *Hark* case was a criminal case which arose under the Criminal Appeals Act. In holding that the subsequent formal order signed by the district judge, rather than the opinion, constituted the judgment, this Court noted that it was "without the benefit of a rule such as Rule 58 of the Federal Rules of Civil Procedure". The Court went on to state (320 U. S. at 534):

> "The judgment of a court is the judicial determination or sentence of the court upon a matter within its jurisdiction. No form of words and no peculiar formal act is necessary to evince its rendition or to mature the right of appeal. * * * *Unaided by statute or rule of court* we must decide on the bare record before us what constitutes the decision or judgment of the court below from which appeal must be taken within thirty days after rendition." (Emphasis added.)

The same result would not have been reached in cases to which Rule 58 is applicable and which involve the recovery only of money. See also *United States v. Roth* (2 Cir. 1953), 208 F. 2d 467, where the court said:

> "Unlike the civil rules, under which the lack of timely appeal here would be quite clear, see Fed. Rules Civ. Proc. rule 58; *United States v. Wissahickon Tool Works*, 2 Cir., 200 F. 2d 936, 939, and cases cited, the federal rules of criminal procedure do not cover the point in issue; * * *"

In civil cases involving money judgments the "judicial determination . . . of the court upon a matter within its jurisdiction" (*U. S.* v. *Hark*, *supra*), is evidenced by the opinion itself and there is required no formal judgment. To the extent that *United States* v. *Higginson* (1 Cir. 1956), 238 F. 2d 439, stands for a contrary view, it is not in harmony with Rule 58. Cf. *Papanikolaou* v. *Atlantic Freighters* (4 Cir. 1956), 232 F. 2d 663. On the other hand, the other cases relied upon by the government do not support the view that a formal judgment is required where the opinion of the court finally adjudicates that a party is entitled to recover only money or that all relief be denied. In *Cedar Creek Oil and Gas Co.* v. *Fidelity Gas Co.* (9 Cir. 1956), 238 F. 2d 298, although all relief was denied to the plaintiff, the defendant was granted relief other than for money. In *Randall Foundation, Inc.* v. *Riddell* (9 Cir. 1957), 244 F. 2d 803, the court expressly instructed counsel to prepare a formal judgment and thus there could be no final adjudication until a formal order was signed. *Reynolds* v. *Wade* (9 Cir. 1957), 241 F. 2d 208, did not turn upon the question whether the court's opinion constituted the judgment but rather upon the question whether the docket entries were sufficient to constitute an entry of judgment.

The position for which we contend does not conflict with the provisions of Rule 79(b), as the government evidently implies (Brief p. 20). Rule 79(b) requires the clerk to keep a copy of every final judgment or appealable order. However, a copy of the opinion on file would satisfy the requirements of the Rule equally well as would a copy of a formal judgment. In the instant case, the docket entry by the clerk expressly directed attention to the "opinion on file."

The government's lengthy discussion (Brief pp. 20-36) as to the desirability of a formal judgment is not helpful. It merely represents one view as to what the rule might be if Rule 58 did not apply; and the discussion is followed (Brief p. 36) by the admission that "a judgment need not be formal". Far from being desirable in a money case, a formal judgment serves no purpose and can only lead to useless delay. Even so short a delay of entry of judgment as delay for the taxing of costs is proscribed by Rule 58. If delay for the taxing of costs, a necessary process in litigation is considered unjustifiable, surely so useless a delay as that required for the repetition in a formal document of relief which has already been granted should not be sanctioned.

Moreover, the government's expressed concern as to the confusion which might arise if formal judgments are not required is without foundation. Whichever way this case is decided, the decision of this Court will eliminate confusion as to the correct rule. That rule, we submit, is that where the opinion of the district court shows complete adjudication in a money action, the opinion itself constitutes the judgment. On the other hand, where the court indicates that more is to be done, such as by appending to its opinion the words "Settle order", there is no final adjudication and the opinion does not constitute the judgment. The government criticizes this rule by pointing to the group of cases reported together as *Edwards* v. *Doctors Hospital* (2 Cir. 1957), 242 F. 2d 888, in one of which (Case No. II) the words "Settle order" appeared at the end of the district judge's opinion even though the opinion left no aspect of the case undecided and, without the words "Settle order," would have shown complete adjudication. In that case the court held that the opinion did not consti-

tute the judgment, as it lacked the finality essential to a judgment. However, we fail to perceive how confusion could result from such a holding; for the test to be applied is not whether the judge might have shown complete adjudication had he chosen to do so, but rather whether he did so. Such a test leaves control over judgments where it belongs: in the hands of the court.

It is, of course, incumbent upon judges to make their intentions clear. In the Appendix to the government's Brief there are cited cases where the judicial intent is said not to have been clear. Assuming this to be so, such cases demonstrate a need for better understanding of the rule, not a need for changing it. As Judge Clark pointed out in *Matteson* v. *United States* (2 Cir. 1956), 240 F. 2d 517:

> "It seems probable that most trial judges respect the spirit of the rules and attempt to make their directions clear and free of ambiguity; but both experience and the reported cases show that a certain number (increasingly fewer, we venture to believe) do not. We state this without attempting to assess blame upon either the counsel who presents or the judge who signs the later form from which all the confusion arises; the strong state practice to the contrary, the tendency of many attorneys to overlook or neglect details of federal practice, the natural willingness of judges pressed *ex parte* 'to expedite the appeal'—all tend that way; and the only remedy seems to be increased knowledge of a different federal practice consistently applied."

Here, however, there was no such ambiguity in the opinion of the district judge. The finality of the adjudication was clear, and the opinion constituted the judgment when filed.

B. In any event, the decision of the district court must be deemed to have constituted the judgment in this case in light of local rules and settled law in the Circuit.

Even if this Court should hold that an opinion of a district court finally adjudicating an action for money only would not, in all districts, constitute the judgment, nevertheless the opinion of the district court in the instant case must be deemed to have constituted the judgment when viewed in light of applicable local rules.

In *United States* v. *Hark*, *supra*, though forced to decide the case "unaided by . . . rule of court", this Court nevertheless indicated that where the intent of the district judge is not clear, the question as to what constitutes the judgment may be resolved by reference to local rules and practice. See also *Commissioner* v. *Estate of Bedford*, 325 U. S. 282.

Even the government, by its discussion (Brief pp. 21-23, 35, 41) of the practice prevailing in various jurisdictions, emphasizes the significance of local rules and practice. It is appropriate to ask, however, what local rules are relevant. It is obviously not the rules prevailing in other jurisdictions, to which the government draws attention, but rather the rules prevailing in the district having jurisdiction of the case—here, the Eastern District of New York.

Rule 10(a) of the General Rules of the United States District Courts for the Southern and Eastern Districts of New York provides:

> "A memorandum of the determination of a motion, signed by the judge, shall constitute the order." [2]

[2] The complete rule reads as follows:

"Rule 10. Orders.

"(a) A memorandum of the determination of a motion, signed by the judge, shall constitute the order; but nothing herein con-

Thus, even assuming that the opinion in the instant case might not otherwise be considered as containing the words of direction which the government claims to be essential under Rule 58, F. R. C. P., there was clearly such a "direction" when the actions of the court are examined in light of local Rule 10(a). The memorandum opinion determining the motion for summary judgment itself constituted the *order*.

Moreover, the meaning of local Rule 10(a) is not open to doubt, for the Second Circuit has consistently held that where an opinion represents complete adjudication of a case, under Rule 10(a) the opinion constitutes the judgment and a subsequent formal order signed by the district judge at the behest of a party does not have the effect of delaying judgment. *United States* v. *Roth*, *supra*; see *United States* v. *Wissahickon Tool Works* (2 Cir. 1952) 200 F. 2d 936.

In light of local Rule 10(a) and the clear pronouncements of the Second Circuit regarding it, there can be no presumption that the formal order signed by the judge in the instant case constituted the judgment as the government contends. On the contrary, it should be presumed that the district judge, in filing an opinion showing complete adjudication, was not unaware of the rules of court in his own district and the decisions of the Second Circuit interpreting

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tained shall prevent the court from making an order, either original or on an application for resettlement, in more extended form."

As the court said in the footnote in *U. S.* v. *Roth*, *supra*: "There may be seeds of ambiguity lurking here as to the effect of granting an application for resettlement of an order. But since no such application was made below, the provision quoted is not presently applicable." See also *Walder* v. *Paramount Publix Corp.* (S. D. N. Y. March 12, 1957) ..... F. Supp. ....., 24 F. Rules Serv. 58.5, Case 1, where the court noted that the provision of local Rule 10(a) relating to resettlement of an order comes into effect only where the judge has called for settlement of an order.

them. Whatever the result might be if local Rule 10(a) did not apply, under that Rule the opinion of the district court in the instant case constituted the judgment.

II.

There was a proper entry of judgment on April 14, 1955 when the Clerk of the District Court docketed the decision granting summary judgment.

If, as we think has been demonstrated, the memorandum decision of the district court constituted the "order" and, accordingly, the judgment in the instant case, then there was a proper entry of judgment when the clerk made his docket entry on April 14, 1955.

Admittedly, the question as to what constitutes a proper entry of judgment is one of first impression for this Court, and the various circuit courts have expressed divergent views on the question, some courts having gone so far as to indicate, without actually being required to decide, that the docket must show the exact amount of the recovery where a money judgment has been rendered. See *United States* v. *Cooke* (9 Cir. 1954), 215 F. 2d 528; see also *United States* v. *Higginson*, *supra*. It is submitted, however, that this view finds no support in Rule 79(a), F. R. C. P., which sets forth the requirements regarding the docket entries, nor is there any valid reason for taking such a restrictive view.

In the instant case, the docket entry stated:

> "April 14 Rayfiel, *J.* Decision rendered on motion for summary judgment. Motion granted. See opinion on file."

This entry told the litigants all that they needed to know about the outcome of the case, and any third person inter-

ested in the outcome could equally inform himself. If the amount of the judgment had been expressly stated in the docket entry, neither the parties themselves nor any third person interested in the outcome could have been any better informed.

Unlike Rule 58, which makes special provision for cases involving the recovery only of money, Rule 79(a) applies to all cases governed by the Federal Rules of Civil Procedure. The same provisions of Rule 79(a) with respect to the content of the docket entries apply to the simplest judgment at law and to the most complicated equitable relief. It would be physically impossible for a clerk to summarize satisfactorily many of the complex judgments which are rendered, and any requirement that he do so would result in the accumulation in the docket of a useless mass of detail.

The question as to how much detail must be inserted in the docket is one which must be decided in each case; for the different types of judgment which may be rendered in litigation are infinite in number. This being so, and in the absence of any specific requirement in Rule 79(a), certainly it is appropriate to leave to the circuit courts an area of discretion as to how much detail the docket entry must contain. Just as it is appropriate in cases of doubt to look to local practice to determine whether there is a judgment, so the question as to whether there has been a proper entry of judgment should be decided in light of such practice. The rule in the Second Circuit that the amount of the judgment need not be stated in the docket entry has long been settled. *United States* v. *Wissahickon Tool Company, supra.* There is no sound reason for changing that rule.

However, regardless of the effect of local rules and decisions, the docket entry in the instant case was fully informative. No one could have been misled. For the benefit of anyone interested in detail, the entry expressly gave directions to the "opinion on file". Such incorporation by reference had exactly the same practical effect as though all of the details of the judgment had been set forth in the docket entry itself. Clearly, the entry set forth the "nature" and "substance" of the judgment and constituted a proper entry of judgment.

Conclusion.

The judgment below should be affirmed.

Respectfully submitted,

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